

REMARKS

Responsive to the preliminary lack of unity determination in the outstanding Official Action, applicants provisionally elect Group I, claims 1-13 and 15-20, drawn to a biosensor, with traverse.

Responsive to the election of species requirement, applicants provisionally elect protein A for the first protein layer in claim 2, with traverse and, should the Examiner permit only one antigen from claims 10-13, applicants provisionally elects the protein of claim 12, with traverse. However, should the Examiner permit more than one antigen from claims 10-13, applicants further elect the bacterium of claim 12 and antibiotics of claim 13, with traverse.

The reasons for traverse follow below.

PCT Rule 13.2 in Part 1b of the Annex B of the administrative instructions under the PCT specifies that "special technical features" is defined as meaning those features that define the contribution which each of the inventions, considered as a whole, makes over the prior art. In other words, PCT Rule 13.2 is art-based and requires the citation of a publication showing the "special technical feature".

The Official Action, however, proposes modification of the WOHLSTADTER et al. patent, as it was well known in the area of diagnostics to substitute various types of signal generation

including various types of signal generation including colorimetric, fluorometric, luminescent and redox species generation. The Official Action further proposes substituting the generation of a redox species and subsequent detection thereof into the device and method of WOHLSTADTER et al. to arrive at the claimed invention.

However, PCT Rule 13.2 is art-based and requires the citation of a publication showing the "special technical feature", not a proposed modification of a publication, absent evidence, to arrive at the "special technical feature". Thus, the requirement is improper as a matter of law.

Moreover, in applying the same legal standard with similar claims, the International Search Authority did not determine the unity of invention as lacking. See, e.g., item 3 of the International Search Report (PCT/ISA/220). Thus, the Patent Office has the benefit of the search report, but fails to explain why a different legal conclusion was reached.

Furthermore, with respect to the election of species requirement. The antigen species are directed to subject matter in which a search and examination may be completed within a narrow discipline. Claims 10-13 are directed to antigens detected by the claimed biosensor of independent claim 1. Accordingly, the antigen species do share a common technical feature, as they depend from independent claim 1, and are antigens detected by the biosensor of claim 1. Thus, it is respectfully submitted that

these antigen species are sufficiently closely related that a full search for one antigen and/or group of antigens detected by the claimed biosensor would yield all prior art relevant to each other.

Entry of the above amendments is earnestly solicited. An early and favorable first action on the merits is earnestly requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Robert A. Madsen, Reg. No. 58,543
209 Madison Street, Suite 500
Alexandria, VA 22314
Telephone (703) 521-2297
Telefax (703) 685-0573

RAM/jr